

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO: 11586 of 2004

Between:

Kadiyala Kotaiah, s/o late Satyanarayana,
R/o Iluru (V) Thotlavalluru Mandal, Krishna District.

... PETITIONER

AND

- 1 District Panchayat Officer, Machilipatnam.
- 2 The Mandal Revenue Officer, Thotlavalluru Mandal,
Thotlavalluru, Krishna District.
- 3 The Joint Collector, Machilipatnam.
- 4 The District Level Committee rep., by its Convenor,
District Panchayat Officer, Machilipatnam.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, more particularly a writ of mandamus, declaring the action of the respondents in issuing paper notification for conducting auction in Eenadu dated 26-6-2004 vide R.K.No.3909/2003 Pm.7 in respect of item No.12 in the publication issued by the 3rd respondent is arbitrary, bad and illegal, consequently direct the respondents to permit the petitioner to lift the

sand at Iluru reach for 113 days by issuing way bills to the petitioner.

Counsel for the Petitioner: MR.KURITI BHASKARA RAO

Counsel for Respondent No.1 and 4: GP FOR PANCHAYAT RAJ & RURAL DEV.

For Respondents 2 and 3: GP FOR REVENUE

The Court made the following:

ORDER:

Heard the learned senior counsel for the petitioner and also the learned Government Pleader appearing for the respondents. Both the counsel argued the matter at length and agreed for final disposal.

2. Petitioner was awarded quarry lease for quarrying sand at Iluru village from K.M.29.00 to 36.00 for the period

03-07-2002 to 03-07-2003 for a lease amount of Rs.6,82,000/- and an agreement to that effect was entered into on 11-07-2002 as prescribed under G.O.Ms.No.1, I&C, dated 01-01-2001. During the contract period, it is stated that petitioner was asked not to lift the sand for a period of four days i.e. from 28-02-2003 to 03-03-2003 and due to issuance of prohibitory orders under Section 144 of the Code of Criminal Procedure by the second respondent dated 31-03-2003, there was restraint on the movement of the vehicular traffic; so petitioner could not lift the sand from the quarry. In view of the same, petitioner made a representation on 23-07-2002 followed by a series of representations for extension of lease period from 10-07-2003 to 31-11-2003, i.e. for a period of 113 days for which, he was prevented from lifting the sand. When his representations did not evoke any response, petitioner filed W.P.No.13122 of 2003, which was disposed of by this Court on 12-12-2003 directing to communicate the order passed by the District Level Committee to the petitioner, in the light of the counter filed by the District Panchayat Officer, admitting that there was stoppage of quarrying for a period of four days on account of Mahasivarathri festival. But, the D.P.O. denied the prevention of petitioner from sand quarrying operation for 113 days. Since the matter is already placed before the District Level Committee for its decision on the

petitioner's representation.

3. Pursuant to the decision taken by the District Level Committee, the Joint Collector through his proceedings ROC.No.1670/01 dated 17-02-2004 granted 33 days of lease for excavation of sand instead of 113 days as requested by the petitioner. On receipt of the said proceedings, petitioner submitted another representation dated 08-03-2004 to the Joint Collector, who in turn, through proceedings dated

15-04-2004 granted 33 days of lease from 20-04-2004 and advised the petitioner to collect the waybills from the office, making it clear that if the petitioner does not utilize the extension of the lease, the same will be cancelled. In spite of the same, petitioner has not approached to receive the waybills. Hence, the impugned notification was issued for conducting the auction. At that stage, petitioner filed the present writ petition and obtained *status quo* of finalization of tenders in respect of the reach in question.

4. In opposition to the same, respondents filed counter affidavit along with vacate stay petition stating that the prohibitory order under Section 144 Cr.P.C. was to restrict the movement of vehicles from both the ends of the bridge across the K.E.B. Canal situated in Iluru village and the orders shall come into force from 18.00 hours of 31-03-2003 until further orders and no orders shall remain in force for more than 2 months and the same will expire on 31-05-2003, whereas the repair works of the bridge commenced on 12-04-2003 and were completed on 30-04-2003. In view of the same, the gap period of 19 days from 12-04-2003 to 30-04-2003 was considered by the District Level Committee and resolved in its resolution No.19, dated 09-12-2003 and accordingly orders were issued by the District Panchayat Officer on

17-02-2004. The contention of the petitioner that he was prevented from excavation of sand from 31-03-2003 to

10-07-2003 has been denied. More so, the Panchayat Secretary, Iluru in his proceedings said to have stated that the petitioner commenced quarrying the sand from 01-05-2000 onwards. In view of the same respondents are justified in granting 33 days, for which the petitioner was prevented from lifting the sand. In spite of making it clear by the Joint Collector in his letter dated 15-04-2004,

petitioner failed to comply with the lifting of sand by obtaining the waybills, which resulted in cancellation of the period already granted. In view of the same, the reach was put to auction.

5. Learned senior counsel for the petitioner contends that the District Level Committee without providing an opportunity to the petitioner to substantiate the period for which he was prevented from lifting the sand, passed order without taking into consideration the letter dated 26-05-2003 written by the District Panchayat Officer, wherein he addressed the Sarpanch, M.R.O, Secretary of the Gram Panchayat and the S.H.O., not to entertain heavy sand transport vehicles till the completion of repairs, which itself shows that the bridge was not open for sand quarrying from 01-05-2003 i.e. the stand taken by the respondents. In view of the same, learned senior counsel for the petitioner contends that the District Level Committee may be directed to reconsider the issue by giving an opportunity to the petitioner to substantiate the period of loss, where he was prevented from lifting the sand.

6. On the other hand, learned Government Pleader contends that the Panchayat Secretary stated that the petitioner commenced quarrying operations from 01-05-2003 onwards. In view of the same, the plea that the petitioner was prevented for 113 days is not correct and the prohibitory orders issued under Section 144, Cr.P.C. were not extended from 01-05-2003. In spite of making the said fact clear to the petitioner, he has not shown any interest to collect the waybills and lift the sand. The authorities, hence, are justified in calling the tenders.

7. When the petitioner earlier approached this Court, District Level Committee was directed to intimate the petitioner about the decision taken on the petitioner's representation for extension of the lease period. Pursuant to the said direction, the District Panchayat Officer through his proceedings dated 17-02-2004 directed the petitioner to quarry the sand for 33 days. In spite of the same, petitioner has not approached the authorities seeking waybills to proceed with the quarrying operations, but made representation on

08-03-2004, for which the Joint Collector specifically informed the petitioner in his letter dated 15-04-2004 that he has to proceed with the quarrying operations from

20-04-2004 for 33 days, failure to comply with the same will be treated as cancellation of the lease. Petitioner neither challenged the said order, nor approached the authorities seeking waybills and kept quiet till the notification was issued and on issuing of the notification, the present writ petition is filed. In view of the stay granted earlier, the Government is deprived of the revenue and the local bodies, who are entitled to share from the lease amount, are also deprived of the revenue, which results in serious repercussions on the developmental activities to be undertaken by them.

8. The District Panchayat Officer in his letter dated 26-05-2003 instructed the Sarpanch, Gram Panchayat, Secretary etc., not to allow any heavy sand transport vehicles till the completion of the repairs to the bridge. In view of the same, whether the petitioner was allowed to commence sand quarrying operations from 01-05-2003 as stated in the counter or not have to be examined by the District Level Committee by giving an opportunity to the petitioner. On petitioner making a representation with specific averments to the said effect, the District Level Committee has to examine the same, and pass appropriate order either for extension of time or in the event, if it comes to a conclusion that the petitioner cannot be permitted to excavate sand by granting further time in the light of the tender notification issued, it is open for it to finalize the tenders and can grant necessary remission of the rentals, if he is entitled as per rules.

The Writ Petition is accordingly disposed of. No costs.

A.

GOPAL REDDY, J

October 4, 2004

MRR

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To:

- 1 District Panchayat Officer, Machilipatnam.
- 2 The Mandal Revenue Officer, Thotlavalluru Mandal,
Thotlavalluru, Krishna District.
- 3 The Joint Collector, Machilipatnam.
- 4 The Convener, District Level Committee,

District Panchayat Office, Machilipatnam.

5 Two C.C. s to the G.P for Revenue and G.P for Panchayat Raj
and Rural Development, High Court Buildings, Hyderabad

OUT).